

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CORRINE MACK,

Plaintiff,

v.

MENASHA PACKAGING,

Defendant.

Case No. 18-cv-1120-JPG-RJD

**MEMORANDUM AND ORDER**

This matter comes before the Court on defendant Menasha Packing's ("Menasha") motion to dismiss Mack's claim for discrimination under the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, for failure to exhaust administrative remedies before filing suit (Doc. 25). Mack did not respond to the motion in a timely manner, so the Court ordered her to show cause why the Court should not construe her failure to timely respond to the motion to dismiss as an admission of the merits of the motion (Doc. 30). Mack responded to the order to show cause, indicating she inadvertently checked the ADA box on her complaint and does not want the Court to dismiss her case (Doc. 35).

The Court notes that on Mack's complaint, she checked the box indicating she was suing under the ADA. However, as the Court acknowledged in its order allowing Mack to proceed *in forma pauperis* (Doc. 11), even though she checked the ADA box, it is clear from the substance of her complaint that she intends to sue for discrimination based on her sex, not a disability.

Therefore, to clarify the state of this case, the Court **GRANTS** Menasha's motion to dismiss any ADA claim that might have been inadvertently pled (Doc. 25), **DISMISSES** any such ADA claim **without prejudice**, and **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case. Mack's sex discrimination and retaliation claims are not dismissed and remain pending.

**IT IS SO ORDERED.**

**DATED: December 4, 2018**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**